BAIL SLIP

The Appellants 1 to 3 herein namely 1. Kasinathan, 2.Velayutham, 3.Arjunan in Crl.A.No.1227/2000 (Accused 1 to 3 in S.C.No.160/2000 dated 23.11.2000 on the file of Principal Sessions Judge, Villupuram) were directed to be released on bail as per order of this Court dated 21.9.2001 and made in Crl.M.P.No.6135/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2005

Coram :

THE HONOURABLE MR.JUSTICE N.DHINAKAR

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.1227 of 2000

1. Kasinathan
2. Velayutham
3. Arjunan — Appellants/Accused 1 to 3

v.

State, represented by
Inspector of Police,
Gingee Police Station,
Crime NO.285/1999 — Respondent

Criminal Appeal filed under section 374 of the Code of Criminal Procedure against the judgment dated 23.11.2000 made in Sessions Case No.160 of 2000 on the file of the Principal Sessions Judge, Villupuram.

For Appellants : Mr.K.V.Sridharan

For Respondent : Mr.M.K.Subramanian,
Government Advocate

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JUDGMENT

(Judgment of the Court was delivered
by M.CHOCKALINGAM, J.)

The appellants are three in number, who brought forth this appeal from the judgment of the Principal Sessions Division, Villupuram in Sessions case No.160 of 2000. These appellants along with two others stood charged and tried as follows:

Appellants 1 to 4 stood charged under section 148 of the Indian Penal Code.

Appellant 5 stood charged under section 147 of the Indian Penal Code.

Appellants 1 to 4 stood charged under section 302 r/w 34 of the Indian Penal Code.

Appellant 5 stood charged under section 302 r/w 149 of the Indian Penal Code.

2. Appellants 1 to 4 were acquitted of the first charge under section 148 of the Indian Penal Code. Appellant 5 was acquitted of the charge under section 147 of Indian Penal Code. Appellants 1 to 3 were convicted under section 302 r/w 34 of the Indian Penal Code for which they were directed to undergo life imprisonment and to pay a fine of Rs.5000/- carrying a default sentence of rigorous imprisonment for six months, while the fourth appellant was acquitted of the said charge. Appellant 5 was acquitted of the charge under section 302 r/w 149 of the Indian Penal Code. Hence, aggrieved over the judgment of the trial Court, accused 1 to 3 have brought forth this appeal.

3. The short facts necessary for disposal of this appeal can be stated thus:

(a) P.Ws.1 and 2 are the sons of the deceased Mannangatti. P.W.3 is the sister's son of the deceased. P.W.4 is the maternal uncle of the deceased. Accused 1 to 3 are the brothers. The deceased is the junior paternal uncle of accused 1 to 3. The family of the deceased gave Rs.15,000/- to one Selvaraj and took his lands under usufructuary mortgage. That land was situated adjacent to the land of the deceased. The accused purchased the same land and they attempted to get possession of the land, but the deceased refused. Therefore, there arose a quarrel.

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(b) On 22.04.1999, the marriage of P.W.2 was scheduled to take place. Till 11.00 p.m. on 20.04.1999, the family members of the deceased were making arrangements for the same. At about 11.00 p.m. the deceased went to chillie garden for taking rest and was sleeping under a tree. On 21.04.1999 at 3 a.m. P.Ws.1 to 3 who were sleeping in the house heard the distressing cries of the deceased saying "Kasinatha, Don't cut me, Arjuna, Velayuda, leave me". P.Ws.1 to 3 on hearing the same ran to the scene of occurrence where they saw accused 1 to 3 cutting the deceased. Accused 1 cut the deceased with koduval on the right side of his neck. Accused 2 cut him on the right upper arm. Accused 3 cut him on the right hand wrist in which two fingers were severed separately and three fingers severed with wrist. On seeing P.Ws.1 to 3 accused 1 to 3 fled away. After recovering from the shock, P.W.1 went to his friend Sampath's house, who was residing in the nearby village, and requested him to draft a complaint. Then he came to Gingee Police Station and gave the complaint, Ex.P.1 to P.W.11, the Sub-Inspector of Police. A case in Crime No.285/99 came to be registered for the offence under section 302 of the Indian Penal Code. Ex.P.16, the printed First Information Report was sent to Court.

(c) P.W.12, the Inspector of Gingee Police Station, took up investigation in this case and proceeded to the scene of occurrence and reached there by 10.15 a.m. He made an observation of the scene of occurrence and prepared a mahazar Ex.P.4 and a rough sketch Ex.P.17. The scene of occurrence was photographed through P.W.6 photographer. The photographs are marked as M.O.4 series, whereas the negatives stand marked as M.O.5 series. From the place of occurrence, the investigating officer seized M.Os.6 to 9 under cover of a Mahazar, Ex.P.5. Between 11.15 a.m. to 01.15 p.m. he conducted inquest over the dead body of the deceased and prepared Ex.P.18, Inquest Report. The dead body was sent for Post-mortem through Constable, P.W.10.

(d) P.W.8, the Assistant Surgeon attached to the Government Hospital, Gingee, on receipt of the requisition, conducted autopsy on the body of the deceased and found the following injuries :

1. Incised wound over the right side of the neck with irregular and corrugated margins size about 12 x 10 cms exposing the tendons, muscles, internal and external carotids, internal jugular veins, larynx and oesophagus. Injury to the internal carotid artery present.
2. Incised wound over the right supraclavicular region exposing the muscles and blood vessels, the wound is also extending to the right supra scapular area exposing the muscles and tendons. Wound margin is highly irregular and corrugated of size 10 x 10 cms.
3. Incised wound over the right forearm 6 x 4 x 2 cms.
4. Severed right hand present separately from the right wrist joint.

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5. Incised wound present over the base of right hand exposing the carpel bones and adjacent ligaments 7 x 5 cms.
6. Ring finger and little finger of the right hand has been severed from the right hand separately.
7. Incised wound extending from the lateral border of the right middle finger crossing the centre of the right dorsum of the hand ending at the base of metacarpel bone 8 x 5 cms.
8. Incised wound over the right wrist joint exposing the lower end of radius, ulna and its adjacent muscles 7 x 5 cms.
9. Incised wound present at the base of middle finger about 6 x 2 x 1 cms at the dorsum of the right hand.
10. Incised wound over the lateral parietal bone associated with fracture of left parietal bone 6 x 4 x bone deep exposing the brain at the fracture site.

The doctor issued Ex.P.7, postmortem certificate with her opinion that the deceased would appear to have died of shock and haemorrhage due to multiple injuries sustained to vital organs.

(e) Accused 2 was arrested on 21.04.1999 at 04.00 pm and he gave a confession statement, the admissible portion of which is marked as Ex.P.2, pursuant to which he produced M.Os.1 to 3, koduvals, which were seized under a mahazar, Ex.P.3. Accused 2 was remanded to custody on 21.04.1999. Accused 3 was arrested on 25.04.1999 and Accused 1 was arrested on 27.01.1999. They were sent to judicial remand. The material objects were sent for chemical analysis through Court along with a requisition letter. Following the same, chemical analysis report and the serologists report were received. All the materials were placed before the committal court. The Committal Court committed the case to Court of Sessions. Necessary charges were framed and the case was taken up for trial before the trial Court.

4. In order to substantiate the charges levelled against the appellants/accused, 12 witnesses were examined by the prosecution. The prosecution relied on 18 exhibits and 12 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. No defence witness was examined. On completion of the trial and after hearing both sides, the trial Court was of the opinion that the prosecution has proved its case against accused 1 to 3, and therefore, found the appellants/accused 1 to 3 guilty and rendered punishment as stated above. Hence, this appeal has been filed.

5. Learned counsel appearing for the appellant, inter alia, made the following submissions :

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In the instant case P.Ws.1 to 4 were marched as eye witnesses. The evidence of P.Ws.1 to 3 was relied by the trial Court for basing the conviction while the evidence of P.W.4 was rejected. P.Ws.1 to 3 could not have seen the occurrence at all for the reason that the deceased was sleeping under a tree in chillie field, while P.Ws.1 to 3 were in the house. According to the prosecution, the marriage arrangements of P.W.2 was going on till 11.00 pm and at that time, all the witnesses were sleeping in the house. They heard the distressing cries of the deceased and therefore, they came out and went to the scene of occurrence. According to them they saw the occurrence. If the deceased was sleeping and at 03.00 am if the first accused was cutting the neck as put forth by the prosecution witnesses, it would have caused instantaneous death. Once such a cut is given on the neck, as found in the postmortem certificate, which is severe, the deceased could not have raised an alarm and therefore, the witnesses could not have seen the occurrence at all.

6. Added further the learned counsel that the contention that P.Ws.1 to 3 could not have seen the occurrence is fully fortified by the delay in lodging the first information report. The occurrence had taken place at 03.00 am and the complaint, Ex.P.1 has been given at 10.00 an to P.W.11, the Sub Inspector of Police, Gingee Police Station, which is only 5 kms away from the scene of occurrence. The only explanation offered by P.W.1 was that he went to meet his friend Sampath and after that he came over to the police station to give the complaint. This evidence has to be rejected for the simple reason that for going to the nearby village he had to go through the police station and in a case of murder any person would have normally gone into the police station to give atleast an oral complaint.

7. Added further the learned counsel that though the first information report was given at 10.00 am, it has reached the Court at 01.45 pm and it is more pertinent to point out that the police station and the Court of the Judicial Magistrate are in the same compound. Therefore, this delay has also not been explained. Added further the learned counsel that the entry in the General diary at the time when the complaint was given shows that a case was registered, but the details regarding the place of occurrence and the name of the person who died, are not found. If that be so, the first information report that is before the Court is not the actual first information report and this would go to show that P.Ws.1 to 3 could not have witnessed the occurrence and they could have seen the dead body after a long time. The learned counsel also submitted that the medical evidence did not support the prosecution. Under the circumstances, the lower Court ought to have acquitted the accused and seek for an acquittal in the hands of this Court.

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8. The Court heard the learned counsel for the State on the above contentions, paid its anxious consideration on the submissions made and also made thorough scrutiny of the available materials.

9. It is not in controversy that Mannangatty died on account of homicidal violence. Following the inquest by the Investigating Officer, P.W.8, the doctor conducted postmortem on the body of Mannangatty and gave a certificate, Ex.P.7 that the deceased died on account of homicidal violence. Apart from that, the fact that he died on account of homicidal violence was never disputed either before the trial Court or before this Court. Therefore, we hold that the deceased died on account of homicidal violence.

10. The only question that is to be decided is whether the prosecution has proved that the accused had committed the crime. In the instant case the prosecution relied upon the direct evidence of P.Ws.1 to 4, out of which the trial Court rejected the evidence of P.W.4 and believed the evidence of P.Ws.1 to 3 and convicted the accused 1 to 3. The occurrence had taken place on 21.04.1999 at about 03.00 am and the marriage arrangements of P.W.2 were going on till 11.00 pm on the previous day and all of them took their after that. P.Ws.1 to 3 slept at their house, while the deceased went outside and was sleeping under a chillie tree. At about 03.00 am P.Ws. 1 to 3 heard the distressing cries of the deceased and rushed to the spot, which, according to the prosecution is 100 or 200 yards away. The nature of the injuries that were caused, even according to the prosecution, is severe, as accused 1 cut the deceased on his neck and after that, the deceased could not have been able to make an alarm and cry, which could have been heard by P.Ws.1 to 3, who were sleeping in their house. Under the circumstances, it is highly doubtful whether P.Ws.1 to 3 could have seen the occurrence at all.

11. In the instant case, as rightly pointed out by the learned counsel for the appellants that there are strong circumstances to prove that P.Ws.1 to 3 could not have seen the occurrence. The occurrence had taken place at 03.00 am. If that be so, there was no impediment for P.W.1 to go to the police station, which is only 5 kms away, instead of going to a nearby village to meet his friend to write a complaint, that too, crossing the police station and the complaint has come to be registered only at 10.00 am by P.W.11, the Sub Inspector of Police and there is no explanation for this delay. What was attempted to be stated by P.W.1 was that he went to the nearby village to meet his friend to draft a complaint, and came back to the police station, gave a report at 10.00 am. This reason is not convincing. Apart from that, in the General Diary there was an entry of the complaint given by P.W.1 at 10.00 am which did not contain the name of the deceased, place of occurrence and the name of the accused. All would go to show that what is now before the court, Ex.P.1 was not the complaint pursuant to which a case was registered by P.W.11, the Sub Inspector of Police and

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it can be well stated that the General diary speaks about some other complaint given by P.W.1. It is more pertinent to point out that the Court of Judicial Magistrate is in the same campus where the police station is situate, but though the complaint was given at 10.00 am, the first information reached the Court at 01.45 pm after more than three hours for which also there is no explanation at all. Therefore, there is no explanation for both the delays - the delay in laying the complaint and the delay in sending the complaint to the Court.

12. Under such circumstances, the Court is of the considered opinion that the prosecution has not proved its case beyond reasonable doubts and therefore, the benefit of doubt should be given to accused 1 to 3. Accordingly, the conviction and sentence imposed on the appellants by the trial Court are set aside and the appellants are acquitted of the charge. The Criminal Appeal is allowed. Bail bonds executed by the appellants shall stand cancelled. The fine amount paid by the appellants shall be refunded to them.

19.09.2005

mf

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copies to

1. The Principal Sessions Judge, Villupuram.
2. The Judicial Magistrate, Gingee.
3. -do- Thro' The Chief Judicial Magistrate, Villupuram.
4. The Inspector of Police, Gingee Police Station, Gingee.
5. The District Collector, Villupuram.
6. The Director General of Police, Chennai.
7. The Public Prosecutor, High Court, Madras.
8. The Superintendent of Central Prison, Cuddalore.

1 cc to Mr.K.V.Sridharan, Advocate, SR.39298

tej (co)

dv/27.9.05

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